Cook County School Bus, Inc. *and* Beer, Soft Drink, Water, Fruit Juice, Carbonic Gas, Liquor Sales Drivers, Helpers, Insider Workers, Bottlers, Warehousemen, School, Sightseeing, Charter Bus Drivers, General Promotional Employees, and Employees of Affiliated Industries, Maltsters, Laborers, Syrup, Yeast, Food, Vinegar, Brewery, Recycling, and Miscellaneous Workers, of Chicago and Vicinity, Illinois, Local Union 744, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America. Cases 13–CA–38108 and 13–CA–38310

March 16, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

On August 31, 2000, Administrative Law Judge Martin J. Linsky issued the attached decision. The Respondent and the General Counsel filed exceptions, supporting briefs, and answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions, and to adopt the recommended Order as modified below in order to conform it to the violations found by the judge[2] and to provide for the traditional make-whole relief as requested by the General Counsel.

AMENDED REMEDY

In addition to the remedial provisions set forth in the judge's decision, the Respondent shall further make whole the unit employees for any loss of wages or benefits they may have suffered as a result of the Respondent's failure to comply with the agreement since December 1, 1999, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 52 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

In the event that the agreement provides for contributions to pension and benefit funds, the Respondent shall make all contractually required contributions to those funds that they have failed to make since December 1, 1999, including any additional amounts due to the funds on behalf of the unit employees in accordance with *Meryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). Further, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make required contributions as set forth in *Kraft Plumbing & Heating,* 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service,* supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

In addition, we shall order the Respondent to deduct and remit union dues and fees as required by the checkoff provisions in the 1998–2001 collective-bargaining agreement between the Respondent and Local 744, and to reimburse that Union for the Respondent's failure to do so since December 1, 1999, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The Respondent, Cook County School Bus, Inc., Arlington Heights, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unlawfully terminating collective-bargaining agreements with the Union and failing to comply with the terms and conditions of collective-bargaining agreements.

(b) Unlawfully withdrawing recognition from the Union.

(c) Unlawfully promising a dedicated driver drawing lottery program or implementing it without giving prior notice and opportunity to bargain to the Union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative actions necessary to effectuate the policies of the Act:

(a) On request of the Union recognize and bargain with it as the designated and exclusive collective-bargaining representative of its employees in the bargaining unit.

(b) Reinstate the unlawfully terminated contract and comply with all its terms and conditions retroactive to December 1, 1999.

(c) Make whole employees for any loss of wages or benefits they may have suffered as a result of its failure

[1] Member Hurtgen adopts the judge's finding that the Respondent violated Sec. 8(a)(5) and (1) by terminating its contract with the Union, failing to comply with the terms and conditions of that contract, and withdrawing recognition from the Union. In doing so, Member Hurtgen relies solely on the judge's alternative analysis that, even considering art. 23 covering "Contract Term" as written, the contract was for a 3-year agreement. Although notice of intent to terminate was permitted after 1 year, the termination would not occur until the end of 3 years. Therefore, the contract was still in effect when the Respondent engaged in the above conduct.

[2] In the text of the judge's decision, he found that the Respondent committed an independent violation of Sec. 8(a)(1) by promising employees benefits in the form of a lottery bonus program. This is alleged as a violation in pars. V and IX of the complaint. The recommended Order and notice are modified to conform to this violation found by the judge.

to comply with the collective-bargaining agreement since December 1, 1999, with interest, as set forth in the remedy section of this decision.

(d) Deduct and remit union dues and fees as required by the checkoff provisions in the collective-bargaining agreement with the Union, and reimburse the Union for its failure to do so since December 1, 1999, with interest as set forth in the remedy section of this Decision.

(e) If requested by the Union, terminate the dedicated driver drawing lottery program.

(f) Within 14 days after service by the Region, post at its facility in Arlington Heights, Illinois, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 1, 1999.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT unlawfully terminate collective-bargaining agreements with the Union and fail to comply with the terms and conditions of collective-bargaining agreements.

WE WILL NOT unlawfully withdraw recognition of the Union.

WE WILL NOT promise employees a dedicated driver drawing lottery program or unilaterally implement it without giving prior notice and opportunity to bargain to the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights guaranteed in Section 7 of the National Labor Relations Act.

WE WILL, on request, recognize and bargain with the Union as the designated and recognized exclusive collective-bargaining representative of our employees on wages, hours, and other terms and conditions of employment.

WE WILL reinstate the contract we unlawfully terminated and comply with all its terms and conditions retroactive to December 1, 1999.

WE WILL reimburse our employees, with interest, for any loss of wages or benefits they may have suffered as a result of our failure to comply with the collective-bargaining agreement since December 1, 1999.

WE WILL deduct and remit union dues and fees as required by the checkoff provisions in the collective-bargaining agreement with the Union, and reimburse the Union with interest for our failure to do so since December 1, 1999.

WE WILL, if requested by the Union, terminate our dedicated driver drawing lottery program.

COOK COUNTY SCHOOL BUS, INC.

Mary F. Herrmann, Esq., for the General Counsel.
Harry Sangerman and *Jeff Novak, Esqs. (McDermott, Will & Emery),* of Chicago, Illinois, for the Respondent.
Patricia Collins and *Susan Brannigan, Esqs, (Asher, Gittler, Greenfield & D'Alba),* of Chicago, Illinois, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARTIN J. LINSKY, Administrative Law Judge. On September 30, 1999, Teamsters Local 744 (the Union) filed a

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

charge against Cook County School Bus, Inc. (the Respondent) in Case 13–CA–38108.

On January 6 and February 2, 2000, the Union filed a charge and first amended charge against Respondent in Case 13–CA–38310.

On February 18, 2000, the National Labor Relations Board, by the Regional Director for Region 13, issued an amended consolidated complaint, which alleges that the Respondent, in violation of the National Labor Relations Act, terminated the parties' collective-bargaining agreement, has repudiated, failed, and refused to apply the terms of the parties' collective-bargaining agreement and withdrew its recognition of the Union. In addition, the complaint alleges that the Respondent promised employees that it would provide moneys equivalent to the amount of moneys unit employees paid in union dues through a lottery whereby 14 drivers each could earn a bonus of $100 in monthly drawings and unilaterally implemented such a lottery system in violation of the Act.

Respondent filed an answer in which it denied that it violated the Act in any way.

A hearing was held before me in Chicago, Illinois, on April 12 and 13, 2000. I find for the General Counsel and conclude that Respondent violated the Act as alleged in the complaint.

Subsequent to the hearing before me, the Region sought injunctive relief under Section 10(j) of the Act in the U.S. District Court for the Northern District of Illinois. The Honorable Judge Suzanne B. Conlon granted injunctive relief in a decision dated May 30, 2000, which I have entered into the record, over the objection of Respondent, as Administrative Law Judge Exhibit 1. I take judicial notice of Judge Conlon's decision because both myself and the Board are entitled to know of her decision although we are bound to decide this case without regard to it or her rationale.

Based on the entire record in this case, but not Judge Conlon's decision, including the posthearing briefs submitted by the counsel for the General Counsel, Respondent, and the Charging Party and on my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

At all material times Respondent, an Illinois corporation with an office and place of business located in Arlington Heights, Illinois (the Respondent's facility), has been engaged in the business of school bus and related transportation.

During the past year, Respondent, in conducting its business operations described above, derived gross revenues in excess of $500,000.

During the past year, Respondent, in conducting its business operations described above, purchased and received at its Arlington Heights facility goods valued in excess of $50,000 directly from points located outside the State of Illinois.

Respondent admits, and I find, that at all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

I. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that at all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Termination of Contract and Withdrawal of Recognition

The key issues in this case are whether there was a collective-bargaining agreement in effect that barred Respondent from terminating its contract with the Union and whether there was a contract bar in effect such that Respondent was without legal authority to withdraw recognition from the Union even though it came into possession of a petition from a majority of its employees stating that they no longer wished to be represented by the Union.

If there was a contract bar in effect then Respondent violated the Act when it terminated the collective-bargaining agreement, withdrew its recognition of the Union, failed to comply with the collective-bargaining agreement, and when it unilaterally implemented its dedicated driving drawing lottery after withdrawal of recognition from the Union without giving the Union prior notice and opportunity to bargain.

For at least the last 20 years the Union has represented a unit of bus drivers who work for Respondent. In 1996 a decertification petition was filed and an election held among the bus drivers. The Union won that election, which was held on January 13, 1997, 40 to 23 and was recertified on March 5, 1997.

Respondent has contracts with several school districts to provide bus transportation. The bus drivers transport students from three different school districts to and from school and, in addition, drive various charters. Charters include driving students to athletic events and on field trips and charters Respondent contracts to handle for outside groups. Charter trips account for only 8 percent of Respondent's gross revenues and not the 80 percent recited on page 305 of the transcript. I hereby correct the transcript.

Introduced at trial were the last nine collective-bargaining agreements. They were as follows:

GC Exh. 5	12/1/80 – 11/30/83
GC Exh. 6	12/1/83 – 11/30/85
GC Exh. 7	12/1/85 – 11/30/87
GC Exh. 8	12/11/87 – 11/30/89
GC Exh. 9	12/1/89 – 11/30/92
GC Exh. 10	12/1/92 – 11/30/94
GC Exh. 11	12/1/94 – 11/30/96
GC Exh. 12	12/1/96 – 11/30/98
GC Exh. 13	12/1/98 – 11/30/01

Three of the contracts were for 3 years (1980–1983, 1989–1992, and 1998–2001) and six of the contracts were for 2 years (1983–1985, 1985–1987, 1987–1989, 1992–1994, 1994–1996, 1996–1998).

The contract at issue in this case is General Counsel's Exhibit. 13 (12–1–98 – 11–30–01). The last contract prior to the one in issue in this case was General Counsel's Exhibit 12 which ran from 12–1–96 to 11–30–98.

Article 23 of the 1996 to 1998 contract provided as follows:

> Article 23
> *CONTRACT TERM*
>
> This contract shall become effective the 1st day of December, 1996 and shall remain in full force and effect through November 30, 1998 and continue in full force and effect from year to year thereafter, unless terminated by mutual consent of the parties hereto, or unless either party shall notify the other sixty (60) days prior to November 30, 1998, or November 30th of any year thereafter, of its desire to terminate or amend this agreement.

In other words, the contract contained a rollover clause which automatically renewed the contract year to year unless the parties mutually consented to terminate or either party should notify the other 60 days prior to November 30, 1998, or November 30, of any year thereafter, of its desire to terminate or amend the agreement.

On September 23, 1998, the Union sent a letter to the Respondent seeking to negotiate a successor collective-bargaining agreement.

The parties met on October 27, 1998, and exchanged proposals for a new collective-bargaining agreement. Consistent with past practice if an article or section was not listed then the party wanted it to stay the same. The 1996 to 1998 agreement was for 2 years. The union proposal wanted the contract term to be 2 years. Respondent's proposal was silent on terms of the contract. Neither side had a lawyer at any of the negotiating sessions.

From the very beginning of negotiations the Union wanted a 2-year contract and the Respondent wanted a 3-year contract.

The parties held negotiating sessions on November 10, 17, and 24, 1998, when the parties reached agreement on a contract which would have to be ratified by the members of the bargaining unit. The Union agreed to Respondent's demand for a 3-year contract.

Consistent with past practice the Union prepared a synopsis of the agreement. General Counsel Exhibit 17 is the synopsis the Union prepared and Respondent agreed was accurate. With respect to article 23 on contract term the synopsis simply stated.

> ARTICLE 23 *Contract Term*
> *3 Years*
>
> The synopsis would only contain the changes to the then current collective-bargaining agreement.

The members of the unit overwhelmingly rejected this contract at a meeting on December 15, 1998.

Thereafter, the parties met again in negotiating sessions on December 21 and 30, 1998.

One of the matters discussed in negotiations was how to handle the matter of charters. The drivers drove school runs for one of the three school districts with whom Respondent had a contract. The school districts differed in that one was high school only and another was elementary school only. In an elementary school, for example, there would be a midday run by virtue of the school district having morning and afternoon kindergarten sessions, whereas in a school district with high schools only there would be no midday bus runs.

Charters were extra driving assignments to take students on field trips and athletic events. There were more charters in some school districts than others and some charters were longer and therefore more lucrative for the driver than other charters. Under the existing contract charters were bid on by the drivers based on companywide seniority regardless of what school district had the charter. In other words drivers by seniority bid on charters in school districts where they did not have their regular route. It was a complicated system and the parties could not agree on how to modify it. Although only 8 percent of Respondent's revenue was generated by charters it took 65 to 70 percent of Respondent's administrative time.

During negotiations the Union suggested that the parties reach agreement on a contract on outstanding issues such as wages but provide for a reopener on the issue of bidding on charters only. Respondent agreed to this proposal. Article 12 covered bidding on charters and was quite complex. As far as a change was concerned the Union wanted charter bidding by companywide seniority and Respondent wanted bidding by school district.

The Union prepared the language after agreement was reached on December 30, 1998, into a synopsis, General Counsel Exhibit 18, which Respondent agreed was accurate.

The synopsis provided, in pertinent part, as follows:

> ARTICLE 2 *Contract Term*
> *3 Years*
>
> Local 744 may notify Cook County School Bus in writing of its desire to reopen this Agreement for negotiations, but provided further, however that such negotiations shall be limited to bidding on charters in Article 12. This Agreement and all other Articles and Sections of this Agreement shall remain in full force and effect as herein above set forth. This reopener shall not extend past November 30, 2000.

On January 12, 1999, the members of the bargaining unit overwhelmingly rejected this contract as well.

The parties returned to the bargaining table on January 25, 1999, and reached agreement on a contract. Again the Union prepared the synopsis (GC Exh. 19), which synopsis the Respondent agreed was accurate.

The pertinent part of the synopsis provided as follows:

> ARTICLE 23 *Contract Term*
> *3 Years*
>
> Local 744 may notify Cook County School Bus in writing of its desire to reopen this Agreement for negotiations, but provided further, however that such negotiations shall be limited to bidding on charters in Article 12. This Agreement and all other Articles and Sections of this Agreement shall remain in

full force and effect as herein above set forth. This reopener shall not extend past November 30, 2000.

On January 29, 1999, a majority of the members voted to ratify the contract and the Union notified Respondent about the ratification.

Consistent with past practice the Union typed up the contract in final form. This was down by the Union's accountant who had the 1996–1998 agreement in a computer and he typed in the changes. Unbeknownst to everyone at the time a typographical mistake was made. A simple typing error.

Article 23 should have read as follows:

CONTRACT TERM

This contract shall become effective the lst day of December, 1998 and shall remain in full force and effect through November 30, 2001 and continue in full force and effect from year to year thereafter, unless terminated by mutual consent of the parties hereto, or unless either party shall notify the other, sixty (60) days prior to November 30, 2001, or November 30th of any year thereafter, of its desire to terminate or amend this agreement.

Local 744 may notify Cook County School Bus in writing of its desire to reopen this Agreement for negotiations, but provided further, however that such negotiations shall be limited to bidding on charters in Article 12. This Agreement and all other Articles and Sections of this Agreement shall remain in full force and effect as herein above set forth. This reopener shall not extend past November 30, 2000.

But instead it read as follows:

CONTRACT TERM

This contract shall become effective the 1st day of December, 1998 and shall remain in full force and effect through November 30, 2001 and continue in full force and effect from year to year thereafter, unless terminated by mutual consent of the parties hereto, or unless either party shall notify the other, sixty (60) days prior to November 30, 1999, or November 30th of any year thereafter, of its desire to terminate or amend this agreement.

Local 744 may notify Cook County School Bus in writing of its desire to reopen this Agreement for negotiations, but provided further, however that such negotiations shall be limited to bidding on charters in Article 12. This Agreement and all other Articles and Sections of this Agreement shall remain in full force and effect as herein above set forth. This reopener shall not extend past November 30, 2000.

The chief negotiator for the Union was John McGinn. He has been with the Union for 15 years and is a business agent, recording secretary, and a trustee. I found McGinn to be a very credible witness. He impressed me as being extremely honest.

McGinn proofread the typed contract but missed the typographical error, i.e., the 60-day notice of desire to terminate or amend should have read "sixty (60) days prior to November 30, *2001*" (emphasis added) and not "sixty (60) days prior to November 30, *1999* (emphasis added).

When he found out about the error and was asked before me why the contract said November 30, 1999, McGinn credibly answered, "I don't know. I goofed" (Tr. 98).

Suffice it to say McGinn got four copies of the contract printed—all with the typographical error—and on February 12, 1999, the Union signed the contract and on February 15, 1999, Respondent signed the contract.

On several occasions in 1999 McGinn contacted Respondent's assistant general manager, Sharon Pierluissi, to discuss the subject of bidding on charters as permitted by the reopener language. On each occasion, Pierluissi put McGinn off saying Respondent was too busy to discuss the subject of bidding on charters.

On July 12, 1999, three employees approached Respondent's general manager, Robert Smith, and expressed their dissatisfaction with the Union. Smith told them he couldn't discuss the matter with them and that they should call the National Labor Relations Board.

Smith then called his superior, Respondent's owner, John Benish, and was told by Benish to consult with counsel and Smith did so.

Thereafter, on two or three occasions in August 1999 Smith was shown a petition with some names on it. He again told the employees he could not be involved.

On September 10, 1999, Respondent, by Robert Smith, sent the following letter to the union:

As you know, Article 23 of the labor contract between Cook County School Bus, Inc. and Teamsters Local 744 contains the following provision:

This contract shall become effective the 1st day of December, 1998 and shall remain in full force and effect through November 30, 2001 and continue in full force and effect from year to year thereafter, unless terminated by mutual consent of the parties hereto, or unless either party shall notify the other, sixty (60) days prior to November 30, 1999, or November 30th of any year thereafter, of it desire to terminate or amend this agreement.

This letter will serve as our notice to Local 744 that we wish to terminate the agreement.

After receipt of this letter the Union checked prior contracts and found to its surprise that a similar typing mistake occurred in the 1994–1996 contract (GC Exh. 11). Article 23 in that contract provides as follows:

CONTRACT TERM

> This contract shall become effective the 1st day of December, 1994 and shall remain in full force and effect through November 30, 1996 and continue in full force and effect from year to year thereafter, unless terminated by mutual consent of the parties hereto, or unless either party shall notify the other, sixty (60) days prior to November 30, 1994, or November 30th of any year thereafter, of its desire to terminate or amend this agreement.

No one ever discussed or mentioned this typing mistake at the time. The Union gave notice of intent to amend the 1994–1996 contract 60 days prior to November 30, 1996.

The contracts for 1989–1992 (GC Exh. 9), 1992–1994 (GC Exh. 10) and 1996–1998 (GC Exh. 12) did not contain the typing error.

The language in the contracts covering 1980–1983 (GC Exh. 5); 1983–1985 (GC Exh. 6); 1985–1987 (GC Exh. 7); and 1987–1989 (GC Exh. 8) contained the following language on contract term with only the years of the beginning and end of the contract being different between the contracts:

CONTRACT TERM

> This contract shall become effective the 1st day of December, 1987 and shall remain in full force and effect through November 30, 1989 and continue in full force and effect from year to year thereafter, unless terminated by mutual consent of the parties hereto, or unless either party shall notify the other, sixty (60) days prior to November 30th of any year thereafter, of its desire to terminate or amend this agreement.

It is interesting to note that in its September 10, 1999 letter of intent to terminate Respondent made a typographical error by writing "it desire" rather than the contractual language of "its desire." Another obvious typing error.

On September 13, 1999, Smith received a petition headed "we no longer want to be represented by Local Teamster Union 744" signed by 46 of Respondent's 60 bargaining unit employees.

On September 13, 1999, Respondent, again by Robert Smith, sent the following letter to the Union:

> In my letter to you dated September 10, 1999, I provided notice that we wished to terminate our collective bargaining agreement. As a result, the agreement will terminate on November 30, 1999.
>
> I now have received a petition from a majority of our employees in the bargaining unit stating that they no longer wish to be represented by Teamsters Local 744. Since Local 744 no longer represents a majority of bargaining unit employees, we are withdrawing recognition of Local 744, effective December 1, 1999. Naturally, we will continue to administer the labor contract until its expiration, however we do not intend to negotiate a successor agreement with Local 744.

It is not alleged nor shown that Respondent unlawfully assisted in or promoted the circulation of the petition received by it on September 13, 1999. Accordingly, if there was no contract bar in effect then Respondent could have, on the basis of this petition signed by a majority of its employees, withdrawn its recognition of the Union because Respondent would have had a good-faith doubt of the continued majority support of the Union among its employees in the bargaining unit. See *Allentown Mack Sales & Service v. NLRB,* 522 U.S. 359 (1998).

If, however, there was a contract bar in effect at the time of the withdrawal of recognition the Respondent, even if it possessed a good-faith reasonable doubt of continued majority support, would not be free to withdraw its recognition of the Union.

It is my conclusion that the first paragraph of article 23 contains a typographical error and that the 60-day notice should read 60 days prior to November 30, 2001, and *not* 60 days' prior to November 30, 1999.

It is clear to me that the parties agreed to a 3-year contract and only when Respondent became aware of the circulation of the decertification petition did it review the contract and seize on, what they well knew, was a typographical error. Relying on what they knew was a typing mistake they terminated the contract and withdrew recognition.

Accordingly, there was a contract bar in place, which prevented withdrawal of recognition from the Union.

In rebuttal a second petition was received in evidence which contained three sheets of paper (GC Exhs. 28, 29, and 30), each of which states, "We, the undersigned bargaining unit employees of Cook County School Bus, Inc., support Teamsters Local Union No. 744, affiliated with the I.B. of T." This second petition is signed by 42 of Respondent's approximately 60 unit employees.

I do not credit the testimony of General Manager Robert Smith.

Following is a portion of Smith's testimony that is instructive:

> ADMIN. LAW JUDGE LINSKY: When did you first find out or become aware that you could terminate the contract on November 30th, 1999?
>
> THE WITNESS: That might have been like in January, February. I'm not sure of the exact day, somewhere in there.
>
> ADMIN. LAW JUDGE LINSKY: Now, you were bargaining for a three year contract?
>
> THE WITNESS: Yes, sir.
>
> ADMIN. LAW JUDGE LINSKY: And the union wanted a two year contract?
>
> THE WITNESS: Uh-huh, yes.
>
> ADMIN. LAW JUDGE LINSKY: And you agreed on a three year contract, is that correct?
>
> THE WITNESS: Yes.
>
> ADMIN. LAW JUDGE LINSKY: But in effect, the contract is really a one year contract, correct?

> THE WITNESS: It's a contract that we have to have language in there where we can open up to insert another complete subject that we really didn't deal with but needed —that we should have dealt with in negotiations.
>
> ADMIN. LAW JUDGE LINSKY: Well, the reopener only went to bidding on charters, correct?
>
> THE WITNESS: Charters is what the subject that we would have been meeting on, yes.
>
> ADMIN. LAW JUDGE LINSKY: But when you wanted to get a three year contract and the union wanted a two year contract, didn't you in effect sign a contract which you saw was for only one year?
>
> THE WITNESS: I look to that as a three year contract that we could open up for the charters. (Tr. 346–347.)

Smith was not credible. I find he knew full well that Respondent entered a 3-year contract with a limited reopener and that notice to terminate or amend should be made 60 days' prior to the end of the contract on November 30, 2001.

Again it is crystal clear to me that Respondent once it knew the decertification petition was circulating among its employees seized on what it knew was a typographical error or obvious typing mistake to give notice to terminate the contract to the Union and to withdraw recognition of the Union once they received the decertification petition.

I find the following cases cited by the General Counsel to be most helpful with regards to the law in this area, i.e., *Americana Healthcare Center,* 273 NLRB 1728 (1985), and *Globe-Union, Inc.,* 245 NLRB 145 (1979). In other words the parties conduct should be governed by what they agreed to and not by what was mistakenly put in the contract.

The case of *Union Fish Co.,* 156 NLRB 187 (1965), is distinguishable. In *Union Fish Co.,* the Board ruled that the length of the term of the contract must be ascertained on its face, without resort to parol evidence, for it to be a contract bar. In this case the term of the contract is ascertained on its face, i.e., a 3-year contract to run from December 1, 1998, to November 30, 2001.

As pointed in *Americana Healthcare Center*, supra, "where a written agreement is not in conformity with the actual intent of the parties, a court of equity will reform the writing in accordance with that intention. 13 Williston on Contracts § 1547 (3d ed. 1970). It is clear that the courts will enforce Board orders requiring a party to execute a contract reflecting the actual agreement of the parties, and this principle supports reformation of the written contract herein." 273 NLRB at 1733.

The Board in *Apache Powder Co.*, 223 NLRB 191 (1976), observed "that rescission for unilateral mistake is, for obvious reasons, a carefully guarded remedy reserved for those instances where the mistake is so obvious as to put the other party on notice of an error." We have such a case here.

The Union makes an additional argument that makes sense to me, namely, that even as written, typing error included, the contract is still a 3-year contract which terminates on November 30, 2001, but the language of the contract permits notice of intent to terminate to be given 60 days prior to November 30, 1999, but, of course, since it is a 3-year contract unless there is mutual agreement to terminate earlier, the contract remains in effect until November 30, 2001. And, of course, would be a contract bar to withdrawal of recognition and obviously Respondent would be required to comply with the contract until November 30, 2001.

Again, the language of article 23 is as follows:

> Article 23
> Contract Term
>
> This contract shall become effective the 1st day of December, 1998 and shall remain in full force and effect through November 30, 2001 and continue in full force and effect from year to year thereafter, unless terminated by mutual consent of the parties hereto, or unless either party shall notify the other, sixty (60) days prior to November 30, 1999, or November 30th of any year thereafter, of its desire to terminate or amend this agreement.
>
> Local 744 may notify Cook County School Bus in writing of its desire to reopen this Agreement for negotiations, but provided further, however that such negotiations shall be limited to bidding on charters in Article 12. This Agreement and all other Articles and Sections of this Agreement shall remain in full force and effect as herein above set forth. This reopener shall not extend past November 30, 2000.

Respondent since December 1, 1999, has violated Section 8(a)(1) and (5) of the Act since it has failed to abide by the current collective-bargaining agreement, including failing to withdraw and remit union dues. In addition, Respondent violated Section 8(a)(1) and (5) of the Act when it unlawfully withdrew recognition of the Union.

B. Unilateral Changes Implemented After Termination of Contract and Withdrawal of Recognition

On December 1, 1999, Assistant General Manager Sharon Pierluissi handed all of Respondent's unit employees a three-page memo signed by General Manager Robert Smith. In the memo addressed to all drivers, Respondent announced that as of 12:01 a.m. that day it was no longer recognizing the Union as the employees' collective-bargaining representative. The memo also stated that it was no longer making dues deductions from their paychecks and that it was instituting a monthly lottery program in which Respondent would contribute $1400 monthly into a fund and would hold drawings where each month 14 of the approximately 60 drivers would win $100. In the memo, Respondent explains that $1400 represents the approximate amount of union dues formerly collected each month from employees. The new bonus lottery program was to be called the "Dedicated Driver Drawing (3D)" Program. General Counsel Exhibit 27. The 3D program described in the memo was in fact implemented, without notification to the Union and without providing the Union with an opportunity to bargain about the new bonus program.

At the time of the hearing, there had been 4 monthly drawings under the 3D program held in December 1999, January, February, and March 2000. Fourteen drivers each month have

been awarded $100. In her testimony, Pierluissi described the drawings as resembling a Lotto drawing, with a cage-like roller where employee names are picked out of the bin. The drawings are held towards the end of each month and at a time when most of the drivers are there so that everyone can watch. After the names are announced, pictures are taken of each winner receiving their $100 bonus from either Robert Smith or Sharon Pierluissi. In these pictures, a sign located behind the winner and manager states "I'm a $100 Winner." All of the "I'm a $100 Winner" pictures are hung up on the walls of the drivers' room at the Arlington Heights facility. The Respondent had never had any similar lottery bonus program, or monetary awards, prior to the 3D program being instituted on December 1, 1999.

It is undisputed that beginning on December 1, 1999, Respondent took a number of actions pursuant to their withdrawal of recognition from the Union. The Respondent admits in its answer to the complaint and in its testimony throughout the hearing that it took the following actions alleged as violations in the instant case:

On December 1, 1999, Respondent distributed a memo to all of its drivers stating that, as of that day, it was no longer recognizing the Union as the employees' collective-bargaining representative, it was no longer taking union dues deductions from their paychecks, and that it was instituting a monthly lottery bonus program, the 3D program, in which the Respondent would award the total monthly union dues previously paid by unit employees, calculated at $1400 per month, to employees each month. The uncontested record evidence clearly establishes that starting on December 1, 1999, Respondent took the actions described in the memo. Respondent withdrew recognition from the Union, stopped abiding by the existing collective-bargaining agreement, including the dues-checkoff provision, and implemented the lottery bonus program, awarding $100 to 14 employees each month since December 1999.

Respondent's termination of the collective-bargaining agreement and withdrawal of recognition from the Union was in violation of Section 8(a)(1) and (5) of the Act. Therefore, all of the subsequent actions taken by Respondent, and alleged in the complaint, I find to be in violation of the Act, since Respondent was still under an obligation to the Union. The announcement and implementation of the lottery bonus program was clearly designed to emphasize to the employees that they no longer needed the Union, and in fact, had added benefits without the Union as their collective-bargaining representative. Respondent's actions were aimed at interfering with their rights guaranteed under the Act.

The undisputed evidence proves that the Respondent violated Section 8(a)(1) of the Act by unlawfully promising employees benefits in the form of the 3D lottery bonus program. *D&H Mfg. Co.,* 239 NLRB 393, 403 (1978). The evidence also establishes that Respondent further violated Section 8(a)(1) and (5) of the Act by unilaterally instituting a lottery bonus program based upon matching the total monthly union dues previously paid by the unit employees and by failing and refusing to abide by the current collective-bargaining agreement, including failing to honor the contractual union dues-checkoff provision. *NLRB v. Katz,* 369 U.S. 736, 744 (1962); *Branch International Services,* 313 NLRB 1293, 1298 (1994).

REMEDY

The remedy in this case should include a cease-and-desist order and the posting of an appropriate notice. The order should direct Respondent to recognize the Union, reinstate the current collective-bargaining agreement and apply the terms of the collective-bargaining agreement as if it had never been terminated. Respondent should terminate its lottery program if requested to do so by the Union.

CONCLUSIONS OF LAW

1. Respondent, Cook County School Bus, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union, Teamsters Local 744, is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent violated Section 8(a)(1) and (5) of the Act when it terminated its contract with the Union and failed to comply with the terms and conditions of the contract.
4. Respondent violated Section 8(a)(1) and (5) of the Act when it withdrew recognition of the Union.
5. Respondent violated Section 8(a)(1) and (5) of the Act when it unilaterally implemented its dedicated driver drawing lottery program without giving prior notice and opportunity to bargain to the Union.
6. The above violations of the Act are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]